IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO.33 OF 2006

Bhagirthibai J. Patil and others ..Applicants

V/s.

Indrajeet Chhabr and others ..Respondents

Mr.Uday P. Warunjikar, advocate for applicants
Mr.V.K.Gupta i/b. Gupta and Gupta for respondent Nos.2, 3 & 4

Coram : D.G.Karnik, J

Date : 16th November, 2006

P.C.

1. Heard learned counsel for the parties. This application is made U/s.24 of the Civil Procedure Code for transfer of an enquiry pending under O.22, R.5 in appeal No.624 of 2001 before the appellate bench of the Small Causes Court, Mumbai to the Court of Civil Judge, Junior Division, Karad.

2. One Mr.Jagannath Patil had filed a suit against his tenant in the Small Causes Court, Mumbai for possession. The suit was decreed and the appeal No.624 of 2001 filed by the tenant is pending before the appellate bench of the Small Causes Court. During pendency of the appeal Jagannath Patil died and present respondent

Nos.2 and 3 made an application to the appellate Court for bringing themselves on record. Present applicants who also claim to be heirs of the deceased Jagannath Patil also made an application for bringing themselves on record of the appeal. In view of the conflicting claims made by the applicants and respondent Nos.2 & 3 the appellate Court adjourned the matter for holding an enquiry under O.22, R.5 of the Civil Procedure Code. I have informed at the bar that the evidence has been recorded in the said enquiry and matter is adjourned for argument.

3. The applicants have filed an application under Section 372 of the Indian Succession Act for Succession Certificate for recovery of credits of Jagannath Patil in the Court of Civil Judge, Junior Division, Karad. The present application is made for transfer of the enquiry which is being conducted by the appellate bench of the Small Causes Court to the Court of Civil Judge, Junior Division, Karad.

4. Mr.Uday Warunjikar, learned counsel for the applicants submitted that issues involved in both matters would be identical and therefore,

the matter should be transferred. Under Section 372 of the Indian Succession Act the Court does not determine title to the property but only authorizes a person to collect credits of the deceased. The person in whose favour Succession Certificate is granted does not become owner of the money collected by him but is required to distribute it amongst the heirs. In the strict sense in an enquiry made under Section 372 of the Indian Succession Act for grant of a Succession Certificate the Court is not required to determine who is legally entitled to the money – i.e. Credits of the deceased. Though, the Court may incidently consider who are heirs to consider the next person to whom Succession Certificate should be granted. On the other hand, enquiry under O.22, R.5 of the Civil Procedure Code is an enquiry to determine who is the legal representative of the deceased. Therefore, scope of the two enquiries is different. Issues in both cases would not be the same.

5. Even otherwise I see no reason to transfer the enquiry before the appellate Court in Mumbai to the Court at Karad. Hearing of the

enquiry has been commenced by the appellate Court and the matter is posted only for decision. As such there is no valid reason for the transfer.

6. For these reasons, there is no merit in the application which is hereby dismissed with cost.

(D.G.Karnik, J.)